

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

4 UNITED STATES OF AMERICA,

5 Government,

HONORABLE GEORGE CARAM STEEH

6 v.

No. 16-20098

7 KHALIL ABU-RAYYAN,

8 Defendant.
9 _____/

10 SENTENCING HEARING

11 Thursday, April 6, 2017
12 - - -

13 APPEARANCES:

14 For the Government:

RONALD W. WATERSTREET, ESQ.
Assistant U.S. Attorney

15 For the Defendant:

TODD A. SHANKER, ESQ.
16 - - -
17

18 *To Obtain Certified Transcript, Contact:*
19 *Ronald A. DiBartolomeo, Official Court Reporter*
20 *Theodore Levin United States Courthouse*
21 *231 West Lafayette Boulevard, Room 238*
22 *Detroit, Michigan 48226*
23 *(313) 962-1234*

24 *Proceedings recorded by mechanical stenography.*
25 *Transcript produced by computer-aided transcription.*

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N O N E

1 Detroit, Michigan

2 Thursday, April 6, 2017

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5 **THE CLERK:** Case Number 16-20098, United
6 States of America versus Khalil Abu-Rayyan.

7 **THE COURT:** Good afternoon.

8 **MR. WATERSTREET:** Good afternoon. Ronald
9 Waterstreet on behalf of the United States.

10 **THE COURT:** Welcome.

11 **MR. SHANKER:** Good afternoon, your Honor.
12 Todd Shanker on behalf of Mr. Khalil Abu-Rayyan who is
13 standing to my right.

14 **THE COURT:** Welcome. This is a continuation
15 of a sentencing hearing that has been taking place over a
16 period of time. I believe we have arrived at a point
17 where the Court simply has to announce its determination
18 of a sentence.

19 Is there anything that either side wishes to state
20 before the Court makes its ruling?

21 **MR. WATERSTREET:** No, your Honor.

22 **MR. SHANKER:** Nothing further, your Honor.

23 **THE COURT:** All right. In this case the
24 parties have agreed upon the advisory guideline range that
25 applies to this case, and that constitutes a range of 15

1 to 21 months in length. The defendant asked the Court to
2 consider imposing a sentence at the low end of that
3 guideline range of 15 months. The government asks for the
4 Court to grant an upward variance to impose a term of
5 eight years, is it -- eight years for the violation.

6 The Court is directed by the statute to consider
7 the advisory guideline range in this case, and I have,
8 indeed, considered that range, along with the factors that
9 are enumerated at Section 3553(a) in deciding on an
10 appropriate sentence. I think it would serve the
11 discussion of the Court's consideration in this matter at
12 least by providing some background.

13 In this case, when Mr. Abu-Rayyan was 12 years
14 old, he was referred to counseling because he told his
15 teacher that he dreamed that he had a gun and shot
16 everyone in class.

17 While in school, he had experience of assaultive
18 behavior which resulted in his suspension from school on
19 three or four occasions for fighting. At age 19, he was
20 in a fight with his brother which resulted in the police
21 being called, and Mr. Abu-Rayyan be detained for some 18
22 hours.

23 At the of age 17, Mr. Abu-Rayyan began using
24 marijuana, and between the ages of 19 and 21, he admitted
25 he was smoking between 10 to 15 marijuana blunts everyday.

1 Mr. Abu-Rayyan reports that his childhood was
2 devoid of abuse, and his necessities of life were
3 provided, but he was bullied by his peers.

4 As early as November of 2014, the defendant
5 re-tweeted, liked and commented on acts of terror and
6 martyrdom on behalf of the foreign terrorist organization
7 Islamic State of Iraq and Levant, formally Al-Qaeda Iraq,
8 commonly referred to as ISIL. His conduct included
9 seeking out internet links to gruesome ISIL videos,
10 posting them on his Twitter accounts, and posting comments
11 after viewing the executions and killings depicted in the
12 ISIL videos.

13 The propaganda on his Twitter account included
14 videos of a Jordanian fighter pilot being burned alive,
15 handcuffed people being executed by being thrown from a
16 high-rise building, the beheading of a Christian in Egypt
17 and news of ISIL victories.

18 On January 22, 2015, the defendant added to his
19 favorites on his Twitter account a photograph of a person
20 about to have his throat slit with a knife.

21 On February 19, 2015, the FBI found a photograph
22 uploaded on the defendant's Twitter account, showing him
23 dressed in camouflage with two similarly dressed
24 individuals, holding a semi-automatic handgun in his right
25 hand, and making an ISIL symbol with the left index

1 finger.

2 On October 5, 2015, the defendant purchased a .22
3 caliber revolver from a sporting good store. In response
4 to a question on the form required by the Bureau of
5 Alcohol, Tobacco and Firearms and Explosives whether he
6 was unlawful user or addicted to marijuana, the defendant
7 falsely stated that he was not.

8 On October 7, 2015, Detroit Police pulled the
9 defendant over for speeding. They found the .22 caliber
10 revolver in the car, along were four bags of marijuana.
11 Mr. Abu-Rayyan admitted he did not have a concealed weapon
12 license, and he was arrested for carrying a concealed
13 weapon in an automobile and possession of marijuana.

14 Following his arrest, he replaced his cell phone
15 and downloaded more disturbing images, including the ISIL
16 flag, people with firearms with the ISIL flag, people who
17 appeared to be burned alive. His wallpaper on his new
18 phone was a picture of a man making an ISIL symbol with
19 his left hand while holding a severed head of a woman with
20 his right hand.

21 On November 15th, the defendant attempted to
22 purchase another firearm from a different sporting good
23 retailer. Again, he lied on the ATF form, and denied that
24 he was a marijuana user. Due to his pending criminal
25 case, he was not allowed to purchase the firearm.

1 Also on November 15th, he and another individual
2 went to the local firing range, rented an AK-47 and AR-15
3 with which they practiced shooting.

4 In the late November 2015, the defendant tweeted
5 photographs of himself firing an AK-47 and an AR-15 type
6 rifle. He captured -- or he captioned one of the
7 photographs as sahwat hunting, sahwat being a term for
8 Iraqis who oppose ISIL.

9 The defendant admits that at the time that he
10 practiced using these two military type rifles, he was
11 viewing and downloading ISIS propaganda.

12 On December 12, 2015, the defendant sent his
13 brother a message that this would be perfect time to do a
14 istigahhadi, being martyrdom or suicide operation.

15 December of 2015, he also began communicating with
16 a FBI undercover employee on social media about ISIS. He
17 consistently expressed his support for ISIL, and his
18 desire to commit a martyrdom operation. He provided
19 detailed descriptions of his plans to behead people and
20 skin them like sheep.

21 By mid-December 2015, he claims that he fell in
22 love with the undercover employee posing as Ghadda, and
23 that he believe he was engaged to be married to her.

24 During his conversations with the undercover
25 employee, whom Abu-Rayyan called Jannah, the defendant

1 stated his desire to shoot up a church near his place of
2 employment. He said that he had an AK-47 with a 40 round
3 magazine, and described the firearm as a type of machine
4 gun ISIL fighters carry. He told the undercover employee
5 that his father discovered the items that he had in his
6 the car to carry out the church shooting, including the
7 AK-47, bullets and a mask. He told the undercover
8 employee that he practiced loading and unloading the gun,
9 and he was targeting the church because many people attend
10 the church, and the church members were barred from
11 carrying firearms inside. Investigators located a church
12 matching the description given by Mr. Abu-Rayyan in his
13 posts which could accommodate up to 6,000 people.

14 When the undercover employee asked the defendant
15 if he regretted not committing this shooting at the
16 church, he responded, honestly, I regret not doing it. If
17 I can't do jihad in the middle -- it appears that it would
18 Middle East, I would do jihad over here.

19 In January of 2016, he told the undercover
20 employee that he wanted to conduct a martyrdom operation
21 by killing a police officer who arrested him while that
22 officer was in the hospital.

23 In January of 2016, the defendant also told the
24 undercover employee that it was his dream to behead
25 someone, and that he was excited about shootings and

1 death.

2 January 15, 2016, the defendant pled guilty to the
3 state charge arising out of his arrest, pleading to
4 possession of marijuana, and he was pending trial on the
5 concealed weapons charge. The state case involved the
6 same conduct involved in this case.

7 On February 26, 2016, he withdrew his guilty plea
8 to the charge of possessing marijuana to enter a plea of
9 guilty to the reduce charge of carrying a concealed
10 weapon.

11 On January 18th, the defendant and the undercover
12 employee had the following conversation, quote, and even
13 my dad, he knows that I support the dawlah, state, a known
14 reference to the Islamic State or ISIS, you know. He
15 tells me everyday, you know, be careful. Watch your
16 posting. Be careful who you talk to. You know, I told
17 him numerous time that I wanted to make jihad. I want to
18 do an istishhadi or martyrdom or suicide. I told my dad
19 that, and he doesn't support it, of course, but he tells
20 me all the time I have to listen to him first.

21 On January 25, 2016, the undercover employee known
22 as Jannah told the defendant that she wanted to die for
23 the sake of Allah because of, quote, seeing my sisters and
24 brothers and young women die in Syria and Iraq like that.
25 The undercover employee also told the defendant that jihad

1 is my dream.

2 In January of 2016, the defendant told the
3 undercover employee that Satan speaks to him at night by
4telling him to burn people alive, tie them up and cut
5their tongues.

6 February 2, 2016, the defendant told the
7undercover employee that he was thinking about hanging
8himself with a rope. The undercover employee told him
9it's forbidden for a person to take his own life, but
10added, like I told you before, you know, when it's for the
11sake of Allah, when it's jihad, or when it's on our creed
12for a cause, that's the only time Allah allows it, but not
13to put your life to waste and just hang yourself like you
14say you want to do, and that conversation the defendant
15tells the undercover employee, I would not like to hurt
16somebody else.

17 February 4, 2016, the investigators executed
18search warrants at the defendant's residence and place of
19employment, and his cell phone and computer were seized.
20Investigators did not find any weapons or ammunition.

21 On February 4th, a criminal complaint entered in
22this case charging the defendant with possessing a firearm
23by an unlawful user of a controlled substance.

24 On the 16th of February, the defendant was charged
25in a two count indictment for making a false statement to

1 acquire a firearm in violation of 18 U.S.C. Section
2 922(a)(6), and possession of a firearm by a probative
3 person in violation of 18 U.S.C. Section 922(g)(3).

4 On March 16th and 24, 2016, the defendant's expert
5 witness Lyle Danuloff, conducted clinical interviews of
6 the defendant in the Wayne County Jail at the defendant's
7 request, also interviewed the defendant's father and
8 stepmother. In conducting his the evaluation, he reviewed
9 a number of other materials, including conversations
10 between the defendant and the undercover employee.

11 During that interview, the defendant's father made
12 false statements and denied that his son had any trouble
13 in school and falsely claimed that the defendant graduated
14 high school without any suspensions or disciplinary
15 actions against him.

16 March 25, 2016, in a letter addressed to the
17 Court, Dr. Danuloff opined that the defendant was
18 competent to assist in his own defense.

19 Dr. Danuloff issued his psychological evaluation,
20 concluding that the defendant did not exhibit any
21 indications of severe psychological disorder or
22 dysfunction, and that report also found that the defendant
23 has a dependent personality disorder and a cannabis
24 dependence.

25 At the bond hearing, Dr. Danuloff testified,

1 proffered his opinion on the defendant's competency and
2 safety of the community upon his release. The Court ruled
3 that Dr. Danuloff is not board certified as a forensic
4 psychologist, and was not qualified to testify on the
5 question of the defendant's potential risk of safety of
6 the community if released on bond.

7 Dr. Danuloff found that the defendant had a deep
8 sense of shame and remorse for all of his actions, and
9 strongly denied the intentions that his verbal behavior
10 would indicate on the surface. He further found that the
11 defendant was psychologically fixated, immature and lonely
12 as an adolescent with compromised marijuana impacting his
13 judgment.

14 On March 14, 2016, the defendant was sentenced to
15 two years probation, 80 hours of community service on the
16 state charges, and on April 18th, this Court denied his
17 motion to be released on bond.

18 This Court also ordered a psychiatric evaluation
19 which was conducted at the Federal Medical Center in
20 Devens, Massachusetts.

21 Dr. Chad Tillbrook, a forensic psychologist,
22 conducted the court ordered evaluation, and found that the
23 defendant did not reveal any thought or speech
24 disorganization indicative of a psychotic disorder. He
25 did report that the defendant drew parallels between his

1 interest in watching violent photos and videos produced by
2 terrorists, and is interested in watching adult
3 pornography, nothing more than curiosity and interest of
4 something so different from his life, end quote.

5 Dr. Tillbrook diagnosed the defendant with an
6 adjustment disorder, mixed anxiety, depressed mood and
7 cannabis use disorder. He found the defendant competent
8 to stand trial.

9 He also found that the defendant is not presenting
10 with acute psychiatric symptoms, and is not a substantial
11 risk of causing bodily harm to others or serious damage of
12 property to another due to mental illness. Inpatient
13 mental health treatment is not indicated at this time.

14 So on August 2nd, the Court held a competency
15 hearing. The Court adopted the report from Dr. Tillbrook,
16 finding the defendant competent to stand trial.

17 The Court heard oral argument on a renewed motion
18 to be release and denied that motion.

19 The defendant pled guilt to these charges on
20 September 13, 2016, and this -- these violations carried
21 statutory maximum penalties of 10 years. The Probation
22 Department has calculated a guideline range of 15 to 21
23 months, and the Court has competing requests of a 15 month
24 sentence or a 96 month sentence.

25 Although sentencing begins with the guideline

1 calculation, the Court is required to consider the
2 appropriateness of a guideline sentence, and whether a
3 variance is warranted. For the reasons that I am
4 discussing, the Court does conclude that an upward
5 variance is called for in this case.

6 The Court must impose a sentence that is
7 sufficient to achieve the statutory purposes of
8 punishment, which includes most importantly here
9 protecting the public from further crimes of the defendant
10 and affording deterrence to criminal conduct. The
11 sentence imposed must not be greater than necessary to
12 achieve these goals. The Court has brought discretion in
13 sentencing, and there's no limitation on the information
14 concerning the background, character and conduct of the
15 defendant that the Court may consider.

16 In determining the appropriate sentence here, the
17 Court accepts the government's position that an above
18 guideline sentence is necessary to protect the public, and
19 to deter further conduct, and the Court will address the
20 3553 factors.

21 So Section 3553 requires the Court to impose a
22 sentence which is sufficient, but not greater than
23 necessary to protect the public from further crimes of the
24 defendant. Given the defendant's prior conduct, dating
25 back to at least November 2014, in which he expressed his

1 support of ISIS, his fascination with murder, beheadings,
2 and savage terrorist attacks, the Court determines that a
3 significant sentence is warranted here.

4 In addition to his stated support of jihadist
5 activities, the defendant made specific statements to the
6 undercover employee that he planned to kill the police
7 officer who arrested him while he was in the hospital, and
8 that he would shoot up a large church near his place of
9 employment.

10 He also emailed his brother that this would be a
11 perfect time to do an istishhadi, being a martyrdom or
12 suicide operation.

13 After he was arrested and tried -- after he was
14 arrested, he tried, but failed to buy another gun
15 illegally, went to the shooting range, fired off an AK-47
16 and an AR-15, and then posted pictures of himself holding
17 those weapons and making the ISIS gesture.

18 The Court is persuaded by the government's
19 argument that the defendant cannot be released, at least
20 not in the near future, without posing a serious risk to
21 the public. If released, no one can ensure that he will
22 not buy a firearm or a weapon and carry out an ISIS
23 terrorist attack like the ones that he discussed with the
24 undercover employee.

25 The defendant argues that when he viewed and

1 expressed his support for ISIS terrorist activities, and
2 he stated his intention to commit his own ISIS terrorist
3 inspired attacks, these were merely the thoughts of an
4 immature, depressed and marijuana dependent adolescent who
5 has reformed his life and his intentions after spending
6 more than the last year in prison. He claims that his
7 confinement has allowed him to withdraw from drug abuse,
8 and clarify his thought process.

9 Furthermore, the defendant argues that Dr.
10 Danuloff and Dr. Tillbrook's evaluations support his claim
11 that he poses no risk to the public.

12 The Court can't agree with that characterization.
13 First, as to Dr. Danuloff, the Court previously found that
14 he is not qualified to testify on the issue of the
15 defendant's potential risk of safety to the community,
16 because he's a non-certified forensic psychiatrist, and
17 for other reasons as well as stated on the record by the
18 Court at that bond hearing.

19 Second, as to Dr. Tillbrook, he did not find the
20 defendant posed a risk -- that he did not find that the
21 defendant posed no risk to the public, only that he did
22 not have a psychological disorder that would create risk
23 of him causing harm to others or that would require
24 inpatient mental health treatment.

25 In other words, the defendant could very well

1 harbor evil intentions and a desire so act on those evil
2 motives, but those intentions are not rooted and or caused
3 by psychological disorder.

4 Dr. Tillbrook's analysis that the defendant does
5 not suffered from acute psychiatric symptoms is likely of
6 little relief to the parishioners of the church that he
7 stated he would like shoot up, or to the police officer
8 that he planned to kill while the officer was in the
9 hospital. Not all criminal conduct can be explained by
10 psychiatric disorders. In fact, when criminal are deemed
11 insane, they are not held responsible for their criminal
12 activity.

13 Here, the fact that Dr. Tillbrook found that the
14 defendant was competent to stand trial and did not require
15 inpatient mental health treatment, does not explain away
16 his cell phone screen saver photograph of an ISIS
17 terrorist holding the severed head of a woman by her hair,
18 or the countless other ways he expressed support of ISIL
19 jihadist activities over the past several years.

20 Blaming the defendant's obsession with ISIL
21 activities on his depression, as he has done in the
22 sentencing memorandum submitted and during oral argument,
23 does not alleviate the Court's concerns about the real
24 risk that he poses to the community if he is released
25 soon.

1 There may be some correlation between an
2 individual's depression, and that individual's willingness
3 to participate in a martyrdom suicide mission, but the
4 defendant has not convinced the Court that incarceration
5 has allowed him to overcome his depression sufficiently,
6 or that he no longer possesses the threat-- poses a threat
7 to the community. It's certainly a good thing that he is
8 no longer using marijuana, because he is confined, but
9 there are no guarantees that he will not return to
10 marijuana use upon his release, or that he would no longer
11 be depressed because of the time he has so far spent in
12 prison.

13 Also, although it is likely that the defendant's
14 habit of smoking 10 to 15 blunts of marijuana per day
15 impacted his judgment, the defendant has not come forward
16 with any medical information or explanation that would
17 support his attempts to blame marijuana for sparking his
18 affinity for ISIS propaganda.

19 The Court has carefully considered the video
20 statement that the defendant submitted with his sentencing
21 memorandum, as well as his personal statement that he made
22 at the sentencing hearing, in which he expressed his deep
23 remorse and shame over his criminal conduct, and gave
24 assurances that he never meant to hurt anyone, and never
25 would do so.

1 In addition, the Court has considered the many
2 letters that the defendant sent to his family members
3 while in prison to show his remorse and rehabilitation.
4 The government points out that there are no letters to the
5 Court written by any others on his behalf asking for
6 leniency.

7 In his statement to the Court, the defendant said
8 that he purchased the gun solely to protect himself while
9 delivering pizzas in Detroit.

10 He further stated that he accepted full
11 responsibility for the reckless and foolish things that he
12 said and viewed, but that he never meant any of those
13 things that he said, apparently in regard to his support
14 of ISIS and his intentions to participate in terrorist
15 inspired activities.

16 The defendant expressed his profuse apologies to
17 his family, and especially to his father, and lamented
18 that he had let them down and deviated from the true
19 meaning of Islam, which he acknowledged is a peaceful
20 religion, having nothing to do with ISIS.

21 He expressed his view that he had been raised in a
22 good family, and that his father is the epitome of the
23 American dream. The defendant's statement at sentencing
24 that he was raised by good family, living the American
25 dream, makes his choice to view and support ISIL jihad

1 propaganda while stating his intentions to shoot up a
2 church and kill a police officer all the more disturbing.
3 Just as mental illness cannot explain away his conduct, he
4 cannot blame an abusive or neglected childhood for his
5 conduct either.

6 The defendant's statements that his incarceration
7 over the past year has allowed him to clear his mind, and
8 that he has never posed and will never pose a threat to
9 the public is self-serving, of course, given his current
10 confinement. While the Court certainly hopes that his
11 statements remorse and rehabilitation are, in fact, true,
12 they amount to too little, too late to persuade the Court
13 that a guideline sentence is sufficient to protect the
14 public.

15 points out in its sentencing memorandum, the
16 Court should not give much weight to an eleventh hour
17 assertion of remorse as any prisoner in his shoes would be
18 willing to do the same, and even considering the letters
19 that he drafted to his family from prison, which he now
20 asserts show his genuine remorse, one of those letters
21 hints at blaming the FBI undercover employee for his
22 predicament, stating that the whole situation was because
23 he wanted to get married.

24 Along these lines, the Court also considers the
25 defendant's argument in his sentencing memorandum and at

1 the sentencing hearing that he was essentially entrapped
2 by the undercover employee to make incriminating
3 statements that he did not really meant to -- in order to
4 impress the informant -- but which he really meant to
5 impress the informant whom he believed was ready to commit
6 jihad because her husband had been killed in Syria by
7 anti-ISIS forces, and that another family member was
8 killed by Shiite ISIS forces in Iran.

9 There is a significant problem with this argument.
10 Abu-Rayyan began viewing and expressing his support of
11 ISIL terrorist activities at least a full year before the
12 informant entered the picture. Prior to contact with the
13 undercover employee, he attempted buy the gun at issue
14 here, went to the shooting range firing an AK-47, and then
15 posted pictures of himself with the AK-47, and the caption
16 sahwat hunting.

17 Prior to contact with the undercover employee, the
18 defendant sent his brother a text message, including a
19 beheading photograph, and announcing that this would be a
20 perfect time to do an istishhadi.

21 While it is true that he begged the undercover
22 employee not to hurt herself, he also discussed with her
23 his plan to shoot up a church and assassinate a police
24 officer.

25 As the government aptly points out, the defendant

1 may claim he made the disturbing statements merely to
2 impress the undercover employee, but anyone who has been
3 victimized by such an attack would find his ideas far from
4 impressive.

5 The Court is also persuaded by the government's
6 argument that the guideline range does not reflect the
7 threat that he poses to public safety. The guidelines
8 range in this case is based solely on possessing guns
9 while addicted to marijuana.

10 So part of this Court's consideration of the
11 sentencing factors directs the Court to consider whether a
12 given sentence will afford adequate deterrence to criminal
13 conduct, and as the Sixth Circuit has observed, it is a
14 defendant's sentence, as much as his conviction or
15 negative publicity that provides deterrence. Deterring
16 those who are contemplating terrorist activities is
17 vindicated by imposing an above guideline sentence here.

18 While many terrorists may be contemplating their
19 own martyrdom operation, as the defendant was in this
20 case, sending the public a message that even the first
21 steps towards committing acts of terrorism may -- will
22 carry serious consequences, may then deter those planning
23 such operations from doing so. If the defendant is
24 sentenced to a little over a year, as he seeks the
25 Court -- as he requests the Court to do, the Court would

1 be sending a message that those who take initial steps, as
2 in this case, will face only a slight jail term, and then
3 will be quickly release so they can try it again.

4 The defendant argues that the time he has spent in
5 prison is sufficient to deter him from participating in
6 conduct that has put him in the predicament in which he
7 now finds himself. Whether or not the defendant has been
8 sufficiently deterred from repeating his criminal conduct
9 however, that is only one part of the equation.

10 The other part is whether others are sufficiently
11 deterred, the concept known as general deterrence, and
12 given the conduct at issue here, the Court finds that a 15
13 month sentence simply is not sufficient to deter others
14 from engaging in similar criminal conduct.

15 Another factor that the Court considers, of
16 course, is the seriousness of the offense. Here, the
17 defendant pled guilty to making a false statement to
18 acquire a firearm in violation of the statute, and
19 possessing a firearm by a prohibitive person. These
20 violations were based on the defendant's admitted use of
21 marijuana, and his lying about it on the ATF form, and his
22 illegal possession of a gun while using marijuana. The
23 defendant blames his marijuana habit for making him
24 depress and impeding his judgment.

25 In fact, he claims his addiction to marijuana, in

1 addition to his immaturity and depression, caused him to
2 support ISIS terrorist activities and to discuss with the
3 undercover employee shooting up a church, and killing the
4 police officer who arrested him. Under the circumstances
5 where he was causing marijuana while buying and possessing
6 a firearm, while viewing and positively commenting on
7 gruesome ISIS terrorist activities like beheadings,
8 burning people alive, his crime becomes much more serious
9 than if he was just buying a gun for personal protection
10 as he argued he was doing at sentence.

11 When the Court considers all of the facts
12 surrounding the defendant's illegal purchase and
13 possession of a gun while heavily using marijuana, his
14 crimes are a matter of significant seriousness. The most
15 compelling aggravating factor in assessing the seriousness
16 of his offense, is that shortly after he was arrested, he
17 attempted to buy another firearm and went to the firing
18 range, practicing the use of an AK-47, and then posted
19 pictures of himself holding the AK-47. Given his
20 conducts, his illegal possession of a firearm and his
21 false denial of his marijuana use to acquire a firearm,
22 are serious offenses requiring a significant upward
23 variance from the guideline sentence, especially because
24 these behaviors occurred while the defendant was engaged
25 in the threatening conversations discussed above.

1 Finally, Section 3553(a) instructs the Court to
2 consider providing the defendant with needed educational,
3 vocational training, medical care, other correctional
4 treatment in the most effective way. The Court is
5 mindful, however, as the defendant points out, that
6 imprisonment is not an appropriate means of promoting
7 correction and rehabilitation.

8 Both Dr. Danuloff and Dr. Tillbrook recommended
9 mental health counseling. The Pre-Sentence Investigation
10 Report noted that the defendant has a significant
11 substance abuse history, for which treatment may be
12 beneficial. The Court may recommend that the defendant
13 receive mental health and substance abuse treatment while
14 incarcerated, and in this way may improve the expectation
15 that the defendant can be safely released into the
16 community at a future day.

17 The defendant seeks to rely on two Rule 11 plea
18 agreements, one filed in this district, the other an
19 unfiled document which, until introduced at the sentencing
20 hearing, was not a matter of public record.

21 The defendant argues these plea agreements support
22 the imposition of a guideline sentence here in order for
23 this defendant to be sentenced in parity with those
24 sentenced for criminal -- for similar crimes.

25 The government responds that this Court cannot

1 rely on those Rule 11 plea agreements in determining an
2 appropriate sentence here, as the Court simply does not
3 have enough facts regarding those agreements before it.

4 As the government points out, those plea
5 agreements may be based on many factors, like the
6 inadmissibility of evidence, the unavailability of
7 witnesses, whether the defendant was facing deportation,
8 whether new case law impeded prosecution, whether
9 exculpatory evidence existed, and whether the defendant
10 was cooperating.

11 Based upon the plethora of information that might
12 have informed those plea agreements, for which the parties
13 and the Court are not privy, those plea agreements are not
14 relevant, and do not form a basis for the Court's
15 sentencing decision in this case.

16 After the sentencing hearing in this case, defense
17 counsel filed an addendum under seal. The Court refers to
18 that addendum here without sealing this order as there is
19 no reason why the matter should not be a matter of public
20 record, and in that addendum, defense states that the
21 record in the case of United States versus Gregerson,
22 16-20552, now indicates that the plea agreement in that
23 case pending before Judge Tarnow did not involve
24 cooperation by the defendant. True or not, the plea
25 agreement in Gregerson has no bearing on this matter. He

1 is not a co-defendant here, and is not charged with the
2 same crimes.

3 At oral argument, the defendant argued that his
4 conduct was protected by the First Amendment, and cited
5 United States versus Shehadeh. Shehadeh does not support
6 the argument that a guidelines sentence is warranted here.

7 In that case the jury convicted Shehadeh of three
8 counts of making materially false statements to government
9 agents, and for lying repeatedly to federal agents about
10 his attempt to travel to Pakistan in 2008 to join a
11 violent insurgent group of Islamist terrorists.

12 At sentencing, the Court granted upward variance
13 from the guidelines range because of the seriousness of
14 his conduct which involved attempting to join the army,
15 while stating that his intention to -- stating his
16 intention to two friends that he was doing so to join
17 violent -- a violent international jihad, and to gun down
18 his comrades.

19 It is true, as the defense quoted at trial, the
20 sentencing judge in that case specifically noted that the
21 Court does not find the fact that Shehadeh created and
22 administered websites regurgitating certain jihadist
23 propaganda to be an appropriate basis for punishment
24 consistent with the First Amendment, but the defendant's
25 statements to his friends about his evil intentions to

1 commit jihad, combined with the steps that he took towards
2 that end by attempting to join the army was sufficient to
3 support an upward variance. Although the sentencing
4 guidelines called for a sentence of 63 to 78 months in
5 that case, the court imposed an above guideline sentence
6 of 156 months, amounting to approximately eight years over
7 and above the advisory range.

8 Like Shehadeh, here the sentencing variance is not
9 based on the defendant's mere trolling of ISIS propaganda,
10 but it's based on the fact that he was posting and stating
11 his support of ISIS terrorist activity at the same time he
12 was purchasing a gun, attempting to purchase another gun,
13 practicing shooting at the firing range, posting pictures
14 of himself, and at the same time telling the undercover
15 employee that he wanted to shoot up the church and kill
16 the police officer while officer was in the hospital.
17 This is not merely viewing or maintaining an ISIS website,
18 as the Shehadeh court found was insufficient, standing
19 alone, to support an upward variance. Rather, this is the
20 sort of serious conduct that the Shehadeh court found was
21 sufficient to vary upwards to give an above guideline
22 sentence.

23 The Supreme Court has held that a defendant may be
24 the subject -- may be subject to an enhanced sentence
25 because his crime is based on the race of his victim, and

1 has rejected arguments that such consideration penalizes
2 offensive thought in violation of the defendant's First
3 Amendment rights. The Supreme Court has observed that the
4 First Amendment does not prohibit the evidentiary use of
5 speech to establish the elements of a crime or to prove
6 motive or intent.

7 So too here. It is appropriate for the Court to
8 consider the Twitter tweets, the ISIS propaganda
9 downloaded to his cell phone, which included the wallpaper
10 on his phone, the severed head of a woman in that photo,
11 as it informs the Court's consideration of what he may
12 have intended when he purchased and attempted to purchase
13 a firearm, when he practiced shooting military type
14 weapons, when he told his brother that he wanted to
15 participate in a martyrdom operation, and when he
16 expressed his plans to murder innocent victims to the
17 undercover employee.

18 As the Supreme Court has noted, a defendant's
19 membership in an organization that endorses the killing of
20 any identifiable group may be relevant to the
21 determination, and to whether that defendant will be
22 dangerous in the future.

23 While defense counsel is correct that the First
24 Amendment may protect the mere viewing and dissemination
25 of ISIS propaganda, when that viewing is combined with

1 conduct suggesting an intention to carry out jihadist
2 activities, the Court is well within its realm when it
3 considers those background facts to inform its
4 determination of defendant's motives and intent.

5 Finally, the Court considers the defense
6 counsel's argument made a sentencing on March 13th, that
7 the government waived its argument for an upward variance
8 because the government did not file formal objections to
9 Pre-Sentence Investigation Report recommending a guideline
10 sentence. Notice that the government is seeking an upward
11 variance is sufficient when set forth in the government's
12 prehearing submission as provided by Federal Rule of
13 Criminal Procedure at 32(h). The notice need not be in
14 formal objections to the PSR, notice in a sentencing
15 memorandum will suffice, as decided in United States
16 versus Gleason, at 277 Federal Appendix 536 at Page 543, a
17 Sixth Circuit case in 2008, affirming an upward variance
18 based on bad conduct after the offense discussed in the
19 government's sentencing memorandum.

20 The government filed a sentencing memorandum on
21 March 2, 2017 seeking an upward variance and asking for
22 the sentence of 96 months. The defendant responded to
23 that memorandum at two sentencing hearings, the first held
24 on the 13th of March, and the second two weeks later on
25 March 27th. Those two hearings span nearly four hours.

1 The defense counsel spoke at great length at
2 both. In addition to his thorough sentencing memorandum
3 and argument at the two sentencing hearings, defense
4 counsel also submitted an addendum in support of his
5 sentencing memorandum on March 20, 2017, which the Court
6 has considered.

7 Under all of these circumstances, the defendant
8 had sufficient notice that the government intended to seek
9 an upward variance. There's no prejudice to the defendant
10 because notice was given in that memorandum rather than in
11 objections to the PSR.

12 In reaching its decision today, the Court
13 recognizes that the advisory range is 15 to 21 months, and
14 that this range still serves as grounding for the specific
15 period to be chosen by the Court in determining the length
16 of confinement. The defendant's significant work history,
17 strong family support, the expressions of abject remorse
18 supports the idea that a sentence can be effective to
19 accomplish the purposes of Section 3553(a) with a period
20 that is less than that asked for by the government, but
21 significantly more than that advocated by the defendant.

22 In sum, the above guidelines sentence in this
23 case is no greater than necessary, and will be sufficient
24 to realize the objectives of Section 3553(a) to protect
25 the public, deter the criminal conduct, and to recognize

1 the seriousness of the offense.

2 Accordingly, and pursuant to the Sentencing
3 Reform Act of 1984, the Court, in considering the
4 guidelines and the factors contained at Section 3553(a),
5 will commit the defendant to the custody of the Bureau of
6 Prisons for a term of 60 months on both Counts 1 and 2
7 concurrently.

8 Upon release from prison, the defendant will be
9 placed on a term of supervised release for a period of
10 three years on each count, also to be served concurrently.

11 The Court will waive the imposition of a fine,
12 cost of confinement, and the cost of supervision given his
13 lack of resources.

14 It is further ordered that the defendant shall
15 pay a special assessment in the amount of \$200.00, which
16 is due immediately.

17 Mandatory drug testing provision is ordered.

18 While on supervision, the defendant shall --
19 well, actually during his term of confinement, the Court
20 will recommend to the Bureau of Prisons that he be
21 confined at a facility offering both mental health and
22 substance abuse treatment while in custody, and as it
23 relates to the substance abuse treatment, the Court will
24 recommend specifically the 500 hour comprehensive drug
25 treatment program.

1 During his supervision, the Court will also
2 adopt all of the standard conditions of supervision that
3 have been adopted by the Eastern District of Michigan, and
4 the following special conditions due to the nature of the
5 offense, and defendant's substance abuse and mental health
6 issues.

7 The defendant shall first, not use or possess
8 alcohol in any consumable form, nor shall he be in the
9 social company of anyone whom he knows to be in possession
10 of alcohol or illegal drugs, or frequent an establishment
11 where alcohol is served for consumption on the premises
12 with the exception of restaurants.

13 The defendant will be ordered to participate in
14 a program approved by Probation for substance abuse, which
15 may include testing to make sure that he has not reverted
16 to the use of drugs or alcohol.

17 The defendant shall participate in a program
18 approved by Probation for mental health counseling which
19 may include anger management.

20 The defendant will be required to take all
21 medications prescribed by a physician, and whose care he
22 is under, including a psychiatrist in the doses and at the
23 times proposed. If the defendant is prescribed
24 medication, he shall take it, and the defendant shall not
25 discontinue his medication without medical advice.

1 Anything else that you believe sentence ought to
2 include Ms. Connelly?

3 **MS. CONNELLY:** No, your Honor. Thank you.

4 **THE COURT:** Okay. Mr. Waterstreet?

5 **MR. WATERSTREET:** Your Honor, as to one other
6 condition, perhaps supervised release, would be his
7 limitation on internet use. It's commonly used in the
8 child exploitation cases where the Court can order that
9 the defendant be limited to only one account, and that
10 account can be limited to what items he can view.

11 His problems arose as a result of his viewing
12 things that the Court deemed to be frightening, and so
13 there are certain factors under supervised release that he
14 can use solely for legal search, outside employment,
15 specific assignments of educational institutions, type
16 email messages without electronic files or images embedded
17 in them, and he can only have access through one internet
18 capable device, and he shall provide the probation officer
19 with accurate information concerning the computer system,
20 and the ip address.

21 It's a way to be monitor him so that we're not
22 back several years down the road making the same arguments
23 that he was depressed, and started following the same line
24 of documents.

25 **THE COURT:** Mr. Shanker, do you have

1 opposition to that?

2 **MR. SHANKER:** Well, your Honor, if this
3 provision were to be added, I would just request that the
4 Probation Department have the discretion to say at some
5 point, I don't think we need to monitor that anymore,
6 because I don't it want to inhibit his ability to go to
7 school or to work or things like that that are going to
8 help him in many other ways.

9 So, you know, I see -- I hear what the government
10 is saying, and I can understand that condition being
11 imposed, but I would just like to make sure that there is
12 this discretion to the probation officer that, you know,
13 maybe he can go the probation officer, and say this
14 condition is not going to work for me, but maybe we can do
15 this, just some kind of discretion.

16 **THE COURT:** I think that makes sense. So we
17 will include the provision with an indication that it
18 shall be a condition as long as the Probation Department
19 feels it necessary to maintain some kind of supervisory
20 monitoring.

21 Any objections for the record that have not been
22 voiced previously, Mr. Waterstreet?

23 **MR. WATERSTREET:** Not another objection, your
24 Honor, but just as a point of order. There was a
25 condition that the defendant agreed to forfeiture of

1 items, and there was an amended stipulated order of
2 forfeiture on March 13, 2017 that was ordered by the
3 Court.

4 I know that oftentimes in the sentencing, the
5 court talks about fine, restitution and forfeiture. I
6 just want to make sure that forfeiture is made part of
7 sentencing in this particular matter as well.

8 **THE COURT:** All right. So we need to enter a
9 final order?

10 **MR. WATERSTREET:** Yes, your Honor.

11 **THE COURT:** Okay. Any objection to that, Mr.
12 Shanker?

13 **MR. SHANKER:** Your Honor, I don't have any
14 objection to what Mr. Abu-Rayyan has already signed and
15 agreed to. So I don't have any problem with that aspect
16 of it.

17 I do just want to make sure that the family gets
18 their computers back, because they got all of that
19 equipment, and they have been waiting, and I think it's
20 only fair that they get that back now as soon as possible.

21 **MR. WATERSTREET:** The forfeiture is not
22 concerned with the computers. It is the firearm and the
23 ammunition.

24 **MR. SHANKER:** No objection.

25 **THE COURT:** Do you have any objection

1 directing the return of those items that belong to the
2 family members?

3 **MR. WATERSTREET:** Once I make sure that all
4 the evidentiary items are taken care of, I have no problem
5 with the return.

6 **THE COURT:** All right. Anything else, Mr.
7 Shanker?

8 **MR. SHANKER:** Well, as far as objections go,
9 your Honor, there was a lot said today in this order, and
10 I would like to get a transcript and review it, but I
11 would maintain the objections and arguments that I made
12 before, but I do want to take a look at the transcript
13 before I make any final -- if there are any additional
14 objections.

15 **THE COURT:** Okay. That would be achievable,
16 although Mr. DiBartolomeo is in the middle of a trial, and
17 he as been having to provide daily copies. So I'm not
18 sure how long it will take, but we'll allow you to file
19 those objections when you -- within how many days of
20 receiving the transcripts?

21 **MR. SHANKER:** Two weeks.

22 **THE COURT:** Okay. That would be great.
23 Mr. Waterstreet?

24 **MR. WATERSTREET:** So I take that as to be his
25 Bostic statement, that the Court is giving him two weeks

1 to file a Bostic statement, is that my understanding?

2 **THE COURT:** Yes, I think that's what it
3 means.

4 **MR. WATERSTREET:** Okay. I just want to make
5 sure.

6 And then the other thing, your Honor, the
7 defendant did not enter into a Rule 11 plea agreement. He
8 still has appellate rights.

9 **THE COURT:** Right. I was just about to get
10 there.

11 **MR. WATERSTREET:** Thank you.

12 **THE COURT:** So Mr. Abu-Rayyan, you should be
13 advised that you have a right to appeal the conviction and
14 sentence imposed by the Court --

15 **THE DEFENDANT:** Yes.

16 **THE COURT:** -- in this case. In order to do
17 so, you have act within the next 14 days by notifying the
18 clerk of the court of your desire to pursue an appeal.

19 **THE DEFENDANT:** Yes, your Honor.

20 **THE COURT:** In the meantime, I know you're,
21 of course, not overly excited about the term that you're
22 ordered to serve. There is a lot of programming in
23 federal system that is available to people who have issues
24 as you've had in the past, and that programming can
25 assist, I think, in helping you avoid making mistakes like

1 this in the future, if you want to take advantage of those
2 programs, and one of them is the substance abuse program.
3 There's also mental health treatment, including anger
4 management, that is available, and I think would be of
5 real help to you.

6 I've been impressed. I was impressed with your
7 statement made at the last hearing, but obviously -- I
8 mean, obviously, you have some issues that need to be
9 resolved in order for you to have a more fulfilling life,
10 and for the Court to be comfortable that's you're not
11 coming out in the same condition that you went in, and
12 that you can provide some comfort to the people in the
13 community that you will be behave in a way that is safe.

14 So I would recommend those programs to you. Look
15 up what there is, and signed up for as much as you can
16 sign up for, okay? And I will wish you good luck, sir.

17 **MR. SHANKER:** Your Honor, I did want to get a
18 recommendation from your Honor on -- he's requesting
19 Milan, and if he does not qualify for that facility, then
20 Pekin FCI in Illinois.

21 **THE COURT:** Okay. I think Milan has both
22 mental health and comprehensive drug program, right?

23 **MS. CONNELLY:** I know it has a drug program.
24 I'm not sure as to mental health. What was the second
25 facility?

1 **MR. SHANKER:** Pekin.

2 **THE COURT:** Should I make that recommendation
3 as an alternative?

4 **MR. SHANKER:** Yes.

5 **THE COURT:** Okay. I'll be happy to do that.

6 **MR. SHANKER:** And the other thing is that the
7 notice of appeal is due within 14 days, but I will be
8 filing objections or maybe within 14 days of receipt of
9 the transcript. So would you just want us to file for and
10 extension of time to file the notice of appeal?

11 **THE COURT:** Yes, you perfect those appellate
12 rights as you see fit.

13 **MR. SHANKER:** Thank you, your Honor.

14 **THE COURT:** Okay. All right. Well then, the
15 Court will order that the sentence be imposed as stated on
16 the record, and again, I wish you good luck.

17 **THE DEFENDANT:** Thank you, your Honor.

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19 (Proceedings concluded.)

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C E R T I F I C A T I O N

I, Ronald A. DiBartolomeo, official court reporter for the United States District Court, Eastern District of Michigan, Southern Division, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings in the above-entitled cause on the date hereinbefore set forth.

I do further certify that the foregoing transcript has been prepared by me or under my direction.

Ronald A. DiBartolomeo, CSR
Official Court Reporter

Date

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